



U.S. Department of Justice

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United States Attorney
District of Massachusetts

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Boston, Massachusetts 02109

MAY 23 1985

REGION I
OFFICE OF REGIONAL COUNSEL

May 28, 1985

William J. Cheeseman
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

Re: U.S. v. AVX, et al.,
Civil Action No. 83-3882-?

Dear Mr. Cheeseman:

Enclosed please find a copy of EPA's progress report on the New Bedford Superfund site that was released on Friday, May 24, 1985.

Plaintiffs propose that counsel for the parties meet as promptly as can be arranged in order to map out Phase II of AVX in light of the delay in remedial decision by the governments, the Court's rulings in March, and the denial of the motion to stay in the Lumberman's cases. Vacation and trial schedules on our side lead us to propose a meeting on June 17, and no earlier. We would suggest that each party attempt to send as few counsel as possible in the hope that the people who will be chiefly involved in the discovery process can focus right on that. May Foley's conference room be made available?

Also, another meeting of the parties' technical experts like the November meeting may be sensible. EPA would be willing to host such a meeting in the relatively near-term if the defendants desire.

You may note the ? in the Re. I am orally informed that all of the AVX cases were drawn by Judge Mark L. Wolf in the blind draw caseload reshuffle attendant upon last Friday's swearing in of two new judges. As Judge Wolf just came from our office, he probably will recuse himself despite having had no direct contact with the case that I can recall. I am uncertain whether the case would then return to Judge McNaught, go to Judge Young, or be

redrawn. I am making inquiries now to the Clerk's office.

Finally, with great regret I hereby make it official that I am planning to leave the U.S. Attorney's office quite soon. I plan to recuse myself from AVX as early as June 3. Please direct your communications after that date to Ellen Mahan of the Environmental Enforcement Section at Main Justice ((202) 633-1196) or Evan Slavitt of this office ((617) 223-0284, on vacation until June 10), and serve all pleadings and mail all correspondence both to Ellen and Evan, as well as to Mark Fitzsimmons at the Environmental Defense Section.

Very truly yours,

WILLIAM F. WELD
United States Attorney

By:



RALPH A. CHILD

Assistant U.S. Attorney

Enclosure

cc: Paul B. Galvani
Daniel J. Gleason
Jeffrey C. Bates
David A. McLaughlin
John Quarles



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J. F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

NEW BEDFORD SUPERFUND SITE EPA PROGRESS AND PLANS MAY 1985

PCB "Hot Spots"

EPA has carefully reviewed comments received in writing and at the October 25, 1984 public hearing on the five cleanup proposals for the New Bedford Harbor PCB "hot spots." These comments have identified several issues which EPA agrees need to be addressed before a remedy can be selected. Originally, EPA had planned to resolve such issues in the design phase.

To resolve these issues, EPA is working with dredging experts at the Army Corps of Engineers to develop detailed analyses of engineering issues related to the cleanup plans. These analyses would include:

- ° A further evaluation of the potential impacts of sediment re-suspension if contaminated Harbor sediments are dredged, as called for by several of the cleanup proposals. If necessary, various control measures will be addressed before a specific cleanup plan is chosen.
- ° An investigation of the potential for contaminated dredged sediments to produce leachate -- formed when liquid moves through wastes and picks up contaminants. This information will be used to decide whether a bottom liner is needed with the in-harbor containment alternatives. Most information to date indicates that PCB-contaminated sediments do not produce leachate because the PCBs remain in the sediments instead of moving with any liquid that passes through them; however, the specific properties of the New Bedford sediments are not known.
- ° An evaluation of: (1) the current health and productivity of the wetlands on the eastern shore of the estuary and (2) the potential impacts on the wetlands if that area were used for an in-harbor containment site.
- ° An evaluation of necessary capping material and cap depth for the hydraulic control and the sub-surface cells options.

The engineering and environmental tests needed to address these issues would be completed, at the earliest, in the summer of 1986. After that, a revised Feasibility Study will be presented to the public for comments.

EPA plans to release this summer the Corps of Engineers' proposal for additional engineering studies, a final decision on these studies, and a tentative schedule for future activities.

Interim Measures

Since the engineering and environmental tests described above will delay the final choice of a cleanup option, EPA has reviewed its on-going interim measures and those suggested by the public and has concluded the following:

- ° Fencing: EPA has determined that fencing the shoreline playground area on the north side of the Coffin Street Cove is an important measure to prevent direct access in this area. EPA will work with city officials to ensure that a fence is erected as soon as possible. Although direct contact with harbor mud and sediments should be avoided, EPA does not believe at this time that fencing the entire area north of the Coggeshall Street Bridge would be an effective action due to the size and topography of the area.
- ° Signs: The Agency will repair and re-post warning signs in the area that have come down this past winter as well as place new signs on selected mudflats above the Coggeshall Street Bridge. EPA will make certain that these signs are maintained and replaced as necessary.
- ° Engineering Measures: EPA, as a precaution, has explored temporary engineering measures for immediate removal of some highly contaminated sediments and methods for preventing further migration of sediments. The Agency has concluded that no immediate removal measure can be undertaken at this time because of the same uncertainties associated with the options considered for a final remedy.

Overall Remedial Investigation/Feasibility Study (RI/FS)

PCB Transport Model and Harbor Sampling:

Laboratory studies conducted by Battelle Labs of PCB behavior in harbor sediments and PCB uptake and release by fish and shellfish are nearly done. These studies will provide information to help establish the mathematical model of PCB movement in the Harbor being developed by Battelle.

Woods Hole Oceanographic Institute has completed analysis of data on currents and tides for inclusion in Battelle's ongoing model. Sampling during a storm will be postponed until fall because a large enough storm did not occur this past winter.

Sampling will be performed this summer by Battelle. Plans are for Woods Hole to resume their monitoring in support of the summer sampling and to study wind and temperature effects during the summer. The next phase of the modeling study will start as laboratory data becomes available. NUS Corporation will analyze approximately 50 samples a week, using a subcontractor to be selected competitively. All of the above data will be included in EPA's final Remedial Investigation/Feasibility Study.

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Enforcement

A preliminary hearing was conducted in March regarding a lawsuit filed in December, 1983 by the United States, under the Superfund law, seeking to recover several million dollars in past and future expenses incurred by the U. S. Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Coast Guard, and other agencies to clean up PCB contamination in New Bedford Harbor. The suit was filed, along with a companion suit by the Commonwealth of Massachusetts, against six corporations which have been connected with one or the other of two capacitor manufacturing plants on the Acushnet River in New Bedford.

Recently, the judge issued an order denying the defendants' motions to dismiss and granting the government's motions to dismiss all but one of the defendants' counterclaims.

Remedial Investigation of Sullivan's Ledge Landfill

Water samples were collected from groundwater monitoring wells and adjacent streams, along with samples of stream sediments. Laboratory analysis has been completed. A second round of sampling was conducted the week of May 20; laboratory analysis is in progress. Once the chemical analysis is completed, a comprehensive analysis of all data will be conducted and a summary report prepared. A topographic survey of the site has been completed and a map is being prepared. Aerial photographs have been used to identify geologic features that could affect the migration of contaminants.

* * * * *

EPA has received reports of fishing and recreational activities in areas that have been closed. EPA is interested in determining the extent of these activities. Information can be reported to Jackie Prince, EPA Site Project Officer at (617) 223-1951 or Debra Prybyla, EPA Community Relations Coordinator at 223-4906, who will make certain that it is brought to the attention of appropriate state officials. Written information may be sent to:

Jackie Prince
Environmental Protection Agency
JFK Federal Building, HWM-1907
Boston, MA 02203

As a reminder, Jackie Prince has replaced Gerry Sotolongo as Project Manager. Gerry has accepted a position with another Branch in EPA's Waste Management Division.